

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

09 JUN 2003

PCT/EP2003/013779



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| Applicant's or agent's file reference 11203P | FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416) | |
| International application No. PCT/EP2003/013779 | International filing date (day/month/year) 05 December 2003 (05.12.2003) | Priority date (day/month/year) 16 December 2002 (16.12.2002) |
| International Patent Classification (IPC) or national classification and IPC B65D 79/00, 81/32 | | |
| Applicant BALL PACKAGING EUROPE GMBH | | |

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of _____ sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

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|---|---|
| Date of submission of the demand 12 July 2004 (12.07.2004) | Date of completion of this report 15 October 2004 (15.10.2004) |
| Name and mailing address of the IPEA/EP | Authorized officer |
| Facsimile No. | Telephone No. |

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/013779

I. Basis of the report

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed
- ☒ the description:
 pages _____ 1-13 _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☒ the claims:
 pages _____ 1-25 _____, as originally filed
 pages _____, as amended (together with any statement under Article 19
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☒ the drawings:
 pages _____ 1/5-5/5 _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
 pages _____, as originally filed
 pages _____, filed with the demand
 pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.
PCT/EP 03/13779

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | | |
|-------------------------------|--------|------|-----|
| Novelty (N) | Claims | 1-25 | YES |
| | Claims | | NO |
| Inventive step (IS) | Claims | 1-25 | YES |
| | Claims | | NO |
| Industrial applicability (IA) | Claims | 1-25 | YES |
| | Claims | | NO |

2. Citations and explanations

1. Reference is made to the following documents:

D1: WO 95/04688.

2.1 Document D1 is considered to be the prior art closest to the subject matter of claim 1. Said document discloses an insert, the subject matter of claim 1 differing therefrom in that the venting aperture communicates directly with the external environment of the insert.

The subject matter of claim 1 is therefore novel (PCT Article 33(2)).

2.2 The problem addressed by the present invention can thus be regarded as that of producing the insert in a more cost-effective manner.

The solution to this problem, as proposed in claim 1 of the present application, involves an inventive step (PCT Article 33(3)). The reasons are as follows:

/...

The insert according to D1 initially floats in the liquid and then, after a while, rotates and sinks. The rotation is required in order that the tube (15) can be sealed by the small ball (19) such that the compressed gas chamber remains dry. In order to ensure that rotation takes place, a complete tube and counterweight system is necessary. The insert according to the present invention works in a different manner, in order to simplify said insert: since venting is direct and, by contrast with D1, not via the compressed gas chamber, keeping the compressed gas chamber dry ceases to be a problem. The rotation and, in consequence, the tube and counterweight system are consequently superfluous and can be omitted.

3. Claims 1-18 are dependent on claim 1 and, hence, likewise satisfy the requirements of the PCT in respect of novelty and inventive step.
4. Since claim 19 is directed to a use of the insert according to claim 1, the subject matter of said claim satisfies the requirements of the PCT in respect of novelty and inventive step.
5. Claims 20-25 are dependent on claim 1 and, hence, likewise satisfy the requirements of the PCT in respect of novelty and inventive step.

PCT-ANTRAG

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|--------------------|--|---|
| VIII-3-1 | Erklärung: Berechtigung, Priorität zu beanspruchen Erklärung hinsichtlich der Berechtigung des Anmelders, zum Zeitpunkt des internationalen Anmeldedatums, eine Priorität zu beanspruchen, in Fällen, in denen der Anmelder nicht der Anmelder der früheren Anmeldung, deren Priorität beansprucht wird, ist oder in Fällen, in denen sich der Name des Anmelders seit dem Einreichen der früheren Anmeldung geändert hat (Regeln 4.17 Ziffer iii und 51bis.1 Absatz a Ziffer iii): Name: | in bezug auf diese internationale Anmeldung Ball Packaging Europe GmbH ist kraft des nachfolgend Aufgeführten berechtigt, die Priorität der früheren Anmeldung Nr. 102 58 791.4 zu beanspruchen: |
| VIII-3-1 (viii) | | der Name des Anmelders hat sich am 14 März 2003 (14.03.2003) von Schmalbach-Lubeca AG in Ball Packaging Europe GmbH geändert |
| VIII-3-1 (ix) | Diese Erklärung wird abgegeben im Hinblick auf: | alle Bestimmungsstaaten |